Calendar No. 881

99TH CONGRESS
2d Session

SENATE

REPORT
99-430

# FISH AND SEAFOOD PROMOTION ACT OF 1986

SEPTEMBER 3, 1986.—Ordered to be printed

Filed under authority of the order of the Senate of August 16 (legislative day, August 11), 1986

Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, submitted the following

## REPORT

[To accompany H.R. 2935]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (H.R. 2935) to promote the consumption of fish and fish products in the United States through the establishment of seafood marketing councils, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill do pass.

### PURPOSE OF THE BILL

The bill, H.R. 2935, as reported, would create a National Fish and Seafood Promotional Council (the "Council"), and would authorize the establishment of species-specific promotional councils, which will enable the United States fish and seafood industry to establish a coordinated program of research, education, and promotion, including export promotion, to expand markets for United States fishery products.

### BACKGROUND AND NEEDS

Although per capita consumption of fish and seafood products reached a domestic record of 14.5 pounds in 1985, it remains low when compared with consumption of other animal protein sources in the United States and fish and seafood in many other countries.

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The U.S. fish and seafood industry is comprised primarily of small fishing, processing, and wholesaling firms which are financially unable to undertake the type of major promotional activities that would be necessary to influence consumer demand on a nationwide basis. Some State and regional fishery marketing programs have been productive, but the success of these efforts would be enhanced if a well coordinated and comprehensive national promotional program for fish and seafood were established and species-specific councils were created with the support of the Federal Government.

Various other commodities have long benefited from the establishment of federally sponsored marketing boards to increase demand for their products. Congress has authorized research and promotion of agricultural commodities in two ways: through the Agricultural Marketing Agreement Act of 1937 (AMAA), and through a series of freestanding pieces of legislation. To date, nine separate boards have been created through freestanding marketing acts, including boards for beef, cotton, dairy, egg, honey, potato, pork, watermelon, and wheat. A floral board has also been statutorily authorized, but it was not approved in an industry referendum. In addition, over forty marketing boards have been established under the AMAA. For fish and seafood products, however, no such promotional mechanism exists.

This bill is patterned after the existing agricultural research and promotional boards. It is intended to increase the consumer sales and quality of fish and seafood products in the United States, and to expand foreign markets for United States-produced fishery products. The Committee has long supported development of the U.S. fishing industry. The United States' 200-mile Fishery Conservation Zone contains an estimated twenty percent of the world's fishery resources. Much of this resource is harvested by foreign fleets and processed outside the United States. Were the United States to fully utilize its fishery resources, the economic contribution to the national economy would be greatly enhanced. A key to developing a more vital fish and seafood industry is an increase in the demand for U.S. fishery products.

Successful marketing of fish and seafood products will also contribute significant public health benefits. Dietitians have traditionally recommended inclusion of fish in the human diet because of its high protein and nutrient value. Recent studies indicate that consumption of some fish and seafood products can lower cholesterol and blood pressure levels, and thereby reduce the risk of heart disease. One empirical study indicated that mortality from coronary heart disease was more than fifty percent lower among those persons who ate at least thirty grams of fish per day than among those who did not eat fish. Additional research is being undertaken by the National Institutes of Health and other organizations. All indications are that at least some fish and seafood products offer important health benefits for consumers.

## Legislative History

During the 98th Congress, the Committee reported S. 2160, a bill to establish a National Seafood Marketing Council. The Senate

passed this bill on October 10, 1985; however, the bill was not enacted into law.

On March 5, 1986, Senator Stevens introduced S. 2138, patterned after S. 2160. The bill was cosponsored by Senator Murkowski. H.R. 2935 was introduced on July 9, 1985, by Representative Breaux and cosponsored by Representatives Jones, Lent, and Young. It set forth a procedure whereby members of the seafood industry can establish species-specific promotional councils on a self-funded basis. H.R. 2935 passed the House of Representatives on December 9, 1985, and was referred to the Committee. The National Ocean Policy Study of the Committee held hearings on these two bills on April 17, 1986. At that hearing, testimony was received from the National Marine Fisheries Service of the Department of Commerce, the National Institutes of Health, and representatives of the fish and seafood industry. The administration supported strengthening the competitive position of the U.S. seafood industry, but expressed opposition to direct involvement of the Federal Government in such activities. Representatives of the fish and seafood industry generally supported the programs authorized by both House and Senate bills.

On July 23, 1986, the Committee ordered reported without objection an amendment in the nature of a substitute for H.R. 2935.

## Summary of Major Provisions

As reported, H.R. 2935 would create a Council comprised of 15 voting members with the Administrator (the "Administration") of the National Oceanic and Atmospheric Administration (NOAA) serving as a nonvoting member. The functions of the Council are to develop promotional plans to increase fish and seafood consumption through education, research and other activities, and to coordinate and assist in the activities of species-specific promotional councils authorized under this act. The Council will be funded by a legislated increase in foreign fishing fees of $5 million annually, and will statutorily expire after four years.

The bill as reported would also authorize the fish and seafood industry to establish species-specific promotional councils on a self-funded basis. To establish a council, an application must be filed by representatives of the fish or seafood industry with the Administrator of NOAA identifying the species of fish to be covered, the sectors of the industry that will be represented on the council, and the sectors of the industry subject to assessment fees. The council will be established if it is approved in a referendum. A council is required to assess and collect fees from the industry to finance its operations. Any individual or company charged a fee may receive a refund upon application. Species-specific councils may also develop quality standards to be used in promotional activities.

## Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, August 13, 1986.*

Hon. JOHN C. DANFORTH,
*Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2935, the Fish and Seafood Promotions Act, as ordered reported by the Senate Committee on Commerce, Science and Transportation, July 30, 1986. We estimate that enactment of this bill would result in net costs to the federal government of about $100,000 to $200,000 annually over the 1987–1991 period.

H.R. 2935 has two purposes: first, it would establish the National Fish and Seafood Promotional Council, comprised of 15 voting members and the Administrator of the National Oceanographic and Atmospheric Administration (NOAA), who would serve as a non-voting member; second, it would allow members of the U.S. fishing industry to establish government-endorsed seafood marketing councils. The national council and industry councils would seek to increase the general demand for fish and seafood by sponsoring programs in research, consumer education, marketing, and the dissemination of data on the industry. The national council would cease operation after fiscal year 1990. There is no expiration date for the industry councils.

To fund the activities of the national council the bill would create the Fisheries Promotion Fund. This provision would require the Secretary of Commerce to raise foreign fishing fees collected annually under the Magnuson Fishery Conservation and Management Act by $5 million in each of the next four years. This amount would then be deposited in the fund for use by the national council, subject to appropriation. Any amounts not appropriated would remain in interest-bearing accounts. For purposes of this estimate, however, we have assumed that the full amount deposited in the fund would be appropriated. The increase in fishing fees would ensure that any spending undertaken by the national council would have no net effect on the federal budget.

The industry councils would be similar in purpose to the national council but would be funded by fees collected from the industry. H.R. 2935 would require the Administrator of NOAA to approve the proposed council charters, conduct an industry referendum for each proposed council, appoint council members, approve each council's budget and marketing plan, issue regulations, and oversee the operations of the councils. We expect that the industry councils would form slowly, at a rate of one to two per year over the next five years.

NOAA would be required to conduct a referendum of potential sector participants in each industry council, but the bill would require each council to reimburse NOAA within two years for all the direct expenses incurred by NOAA in conducting the referendum. These collections would directly offset the appropriations used to fund NOAA's expenses. The reimbursement would exclude NOAA salaries and overhead, however. The net costs to NOAA for program start-up and maintenance are expected to be about $100,000

to $200,000 annually over the next five years, depending on the number of referenda conducted and assuming reimbursement of about one-half the cost of conducting a referendum.

No net cost would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

## REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

H.R. 2935, as reported, would create a National Fish and Seafood Promotional Council and allow for the establishment of species-specific promotional councils to conduct a program of market research, education, and promotion to expand the markets for United States fish and seafood products. Under the act, the Administrator of NOAA will be required to promulgate regulations for establishment and conduct of the Council and the species-specific councils. This requirement will result in somewhat increased economic regulation and paperwork for the U.S. fishing industry. For example, individual firms may be required to provide economic data and file paperwork in connection with assessments. However, these new requirements will be undertaken only when approved by the industry in a referendum and will therefore be largely voluntary. The principal impact on privacy relates to mandated access to records and books of businesses covered by industry assessments. Risk of compromises to privacy are mitigated by the act's restriction against the release of confidential data.

## SECTION-BY-SECTION ANALYSIS

### SECTION 1.—SHORT TITLE

This section provides that the legislation may be cited as the "Fish and Seafood Promotion Act of 1986".

### SECTION 2.—FINDINGS

This section states the findings of the Congress in developing this legislation.

### SECTION 3.—PURPOSE

This section states the purposes of the Congress in developing this legislation.

### SECTION 4.—DEFINITIONS

This section defines the major terms used in the legislation.

SECTION 5.—ESTABLISHMENT OF A NATIONAL COUNCIL

This section sets forth the composition of the Council. The Council is to be composed of fifteen voting members with the Administrator of NOAA, or the Administrator's designee, serving as a nonvoting member. The Administrator is authorized to determine the manner in which nominations are received and members are appointed. The Committee intends that the Administrator seek recommendations from the industry of the most qualified candidates for Council membership. Three voting members will be appointed from each of four regions of the country: the Northeast; Southeast; Pacific; and Alaskan regions. Of the three members from each region, one shall be primarily a harvester, one primarily a processor, and one primarily a marketer. The Committee intends the term "fish and seafood" to include both fresh water and marine species and this section ensures that there will be two voting members on the Council representing fresh water fisheries. In addition, there will be one at-large voting member with demonstrated expertise in the U.S. fishing industry from an organized labor union. This section also sets forth the date by which the Council must convene the first meeting, and clarifies that the members of the Council will serve without compensation but shall be reimbursed for reasonable expenses.

SECTION 6.—FUNCTIONS AND DUTIES OF THE NATIONAL COUNCIL

The Committee intends that the Council promote the consumption of, and demand for, fish and seafood generally. The Council is not to promote one species or type of fish and seafood over another.

Subsection (a) of this section directs the Council to submit an annual marketing and promotional plan and an annual budget to the Administrator. In addition, the Council is required to maintain accounting records and such other books as the Administrator determines appropriate. Annual marketing and promotional plans may contain plans to coordinate promotional activities with species-specific councils established under section 10 of this act. This coordination can be accomplished through the sharing of information reported from various species-specific councils.

Subsection (b) of this section requires that each marketing and promotional plan developed by the Council be directed at increasing the general demand for fishery products, improving promotion and utilization of fishery products, and improving consumer education and research on fish and seafood products. As part of the Council's research goals, the Committee believes that efforts to determine the desirability and feasibility of initiating a comprehensive seafood inspection program, for example, would be appropriate. The increased availability of high-quality fishery products could lead to increased consumer confidence in fish and seafood products and thereby lead to greater consumption of those products.

Subsection (c) clarifies that all references to private brands in the Council's promotional or educational activities are prohibited.

Subsection (d) of this section authorizes the Council to employ an executive director.

Subsection (e) of this section authorizes the Council to enter into agreements with applicants proposing to establish species-specific councils for the purpose of funding the referendum required to establish a council. The Committee envisions the Council as a vehicle to generate increased promotion of fish and seafood products. For that purpose, the establishment of species-specific councils will be important and should be encouraged. In addition, the Council may enter into agreements with species-specific councils to fund a referendum to establish quality standards or to terminate a council.

Subsection (g) of this section limits the duration of the Council to approximately 4 years, ending on October 1, 1990.

SECTION 7.—DUTIES OF THE ADMINISTRATOR

This section requires the Administrator to review the annual promotional plan and Council budget, and approve such plan and budget if the Administrator determines that they are in accordance with the purposes and policies of the act. The Administrator is also required to withdraw sums from the Fisheries Promotional Fund established by section 9 that are necessary to carry out the Council's approved promotional plans.

SECTION 8.—VOLUNTARY PAYMENTS

This section allows for voluntary payments to be made to the Fisheries Promotional Fund established by section 9.

SECTION 9.—ESTABLISHMENT OF THE FISHERIES PROMOTIONAL FUND

A fund in the Treasury of the United States is established to carry out the Council's activities. The major source of revenues for the Fund is a legislated increase in foreign fishing fees collected under the Magnuson Fishery Conservation and Management Act.

SECTION 10.—ESTABLISHMENT OF A COUNCIL

This section sets forth procedures whereby members of the fish and seafood industry can establish promotional councils for one or more species of fish. Applications to form a council are to be submitted to the Administrator and must contain information the Administrator considers necessary, including the minimum requirements that persons in each sector must meet in order to participate in the referendum, identification of those sectors subject to the referendum, and the proposed rates that will be imposed upon those subject to fees. Approval of the application requires a numerical majority vote in favor of the proposed charter and those who are in the majority must represent at least 66 percent of the value of fishery products described in the application.

The initial cost of the referendum to establish a council shall be borne by the Administrator; however, within 2 years after the council is established, the Administrator shall be reimbursed for the cost of the referendum. The Administrator may require that the applicants post a bond for the cost of the referendum. The Council may also enter into agreements with council applicants to fund any portion of the referendum cost.

SECTION 11.—FUNCTIONS AND POWERS OF COUNCILS

Subsection (a) sets forth the responsibilities of a council. A council established under section 10 of this act is required to: prepare and submit to the Administrator promotional plans describing the activities of the council; determine the assessments to be made; prepare and submit a budget for the upcoming fiscal year; and maintain such books and records as may be necessary. This section describes how the funds that are collected by a council shall be used. Such uses may include research, consumer education, and other promotional activities designed to increase the general demand for fish and seafood products.

Subsection (b) of this section sets forth the discretionary authority of a council. A council may work with other councils and the Council to establish and implement a national promotional plan. The Committee intends that during the 4-year duration of the Council, species-specific councils will work closely with the Council to coordinate promotional activities.

Subsection (c) describes a voluntary quality standard that may be established by a council. A quality standard may be adopted by a council if it is first approved by an industry referendum. The Administrator is required to establish procedures for use of a mark identifying adopted quality standards. The Committee intends that all products which meet the standard shall have the right to use the mark.

SECTION 12.—FUNCTIONS AND POWERS OF THE ADMINISTRATOR

This section outlines the duties of the Administrator with respect to reviewing and approving council marketing plans and budgets. The Administrator must approve or disapprove plans or budgets within 60 days after a council transmits a plan or budget and must immediately notify the council in writing if a marketing plan or budget is disapproved.

SECTION 13.—ASSESSMENTS

This section sets out procedures for the collections of assessments. The Committee does not intend that assessments be collected from any person who was not eligible to vote in the referendum establishing the council under the criteria of section 10(b)(6) of the act unless that person meets such criteria at the date of collection of the assessments.

SECTION 14.—PETITIONS

This section sets out the procedure by which an individual may challenge and pursue relief from assessments and other requirements imposed under this act.

SECTION 15.—REFUNDS

This section of the bill provides that any person who pays an assessment may receive a refund upon demand, and directs councils to establish procedures whereby such refunds can be requested and received.

SECTION 16.—TERMINATION OF A COUNCIL

This section sets forth the procedure for terminating a council. Termination requires that a petition be filed by at least three sector participants in any one sector and that those participants account for not less than 20 percent of the value of fishery products handled by that sector. If the petition is approved in a referendum by a majority of those voting and that majority represents at least 66 percent of the value of fishery products handled by the sector, the council would be terminated.

SECTION 17.—ENFORCEMENT

This section sets forth the procedures whereby the councils, the Administrator, and the Attorney General can impose civil penalties on individuals who violate provisions of this legislation.

SECTION 18.—INVESTIGATIONS

Consistent with section 17, this section authorizes the Administrator to investigate violations of this legislation.

SECTION 19.—REPORT

This section requires the Administrator to report to Congress on the effectiveness of this act with respect to increasing the markets and quality of fish and seafood products, and achieving the other purposes of this act.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

## THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

### Section 204 of that Act

SEC. 210. PERMITS FOR FOREIGN FISHING.

(a) * * *

(b) APPLICATIONS AND PERMITS UNDER GOVERNING INTERNATIONAL FISHERY AGREEMENTS.—(1)–(9) * * *

(10) FEES.—(A) Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit is issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State, shall establish a schedule of such fees which shall apply nondiscriminatorily to each foreign nation. *The Secretary shall increase such schedule by a total of $5,000,000 in each calendar year, for purposes of making the deposit required by section 9(b) of the Fish and Seafood Promotion Act of 1986.*

(B) Unless subparagraph (C) applies, the fees imposed under subparagraph (A) shall be at least in an amount sufficient to return to the United States an amount *equal to such deposit, plus an amount* which bears to the total cost of carrying out the provisions of this

Act during each fiscal year the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during such preceding year.

(C)–(F) * * *

(c) * * *

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**Calendar No. 893**

99TH CONGRESS
*2d Session*

SENATE

REPORT
99-437

# INDEPENDENT SAFETY BOARD ACT AMENDMENTS OF 1986

SEPTEMBER 10 (legislative day, SEPTEMBER 5), 1986.—Ordered to be printed

Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, submitted the following

## REPORT

[To accompany S. 2807]

The Committee on Commerce, Science, and Transportation, having considered an original bill (S. 2807) to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1987, 1988, and 1989, and for other purposes, reports favorably thereon and recommends that the bill do pass.

### PURPOSE OF BILL

The bill, as reported, would amend certain provisions in the Independent Safety Board Act of 1974 and authorize $24 million, $25,400,000 and $27 million for the activities of the National Transportation Safety Board (NTSB) for fiscal years 1987, 1988, and 1989 respectively.

### BACKGROUND AND NEEDS

In 1983, Congress provided the NTSB with a simple, 3-year funding authorization. Since that time, an unusually large number of accidents in all transportation modes have required NTSB investigation. This, combined with increased budgetary constraints, has caused the NTSB to reassess its operations with a view toward improving economy and efficiency. The bill, as reported, is based on draft legislation submitted by the NTSB that takes into account this reassessment.

### LEGISLATIVE HISTORY

The Aviation Subcommittee held a hearing on the NTSB draft proposal on July 22, 1986. Witnesses at the hearing included the

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Acting Chairman of the NTSB, and two representatives of private interests requesting changes in NTSB's investigative policies and practices. On August 7, 1986, the Committee met in open executive session to consider an original bill entitled the "Independent Safety Board Act Amendments of 1986." The Committee agreed by a roll-call vote of 9 yeas and 7 nays to an amendment offered by Senator Exon to use Airport Improvement Program (AIP) funds for the payment of airport liability insurance premiums. In turn, the Committee, without objection, ordered the original bill to be reported favorably.

## Summary of Major Provisions

As reported, the bill would:

1. Authorize funding for the NTSB for fiscal years 1987, 1988, and 1989;
2. Provide the NTSB with authority for a $1 million emergency fund for use in years where there are an unusual number of accidents and regular funding authority would not be adequate to cover expenses;
3. Delete certain Federal Register notice requirements which are believed to be unnecessary;
4. Redirect tuition funds collected from non-NTSB employees attending accident investigation training courses to NTSB's appropriations in order to offset costs;
5. Require payment, which would be applied to the NTSB's appropriations, from Federal agencies, and State, local, and foreign governments which request assistance with accident investigations;
6. Allow the NTSB to defer temporarily the release of information obtained in foreign investigations in order to preserve confidentiality of information until the foreign government authorities disclousre; and
7. Amend the Airport and Airway Improvement Act of 1983 to allow airports on a hardship basis to use up to $50,000 of their fiscal 1987 AIP grants for the payment of airport liability insurance premiums.

## Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
*Washington, DC, August 21, 1986.*

Hon. John C. Danforth,
*Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, DC.*

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for the Independent Safety Board Act Amendments of 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: To be assigned.

2. Bill title: The Independent Safety Board Act Amendments of 1986.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science and Transportation, August 7, 1986.

4. Bill purpose: This bill will authorize the appropriation of $24.0 million, $25.4 million and $27.0 million for fiscal years 1987, 1988 and 1989, respectively, for the National Transportation Safety Board (NTSB). In addition, it would authorize an emergency fund of $1 million to be available for necessary expenses, not otherwise provided for, of the NTSB for accident investigations. The bill would authorize the appropriation of such sums as may be necessary to establish and replenish the fund annually.

Other provisions of this bill 1) provide that tuition collected from non-NTSB employees attending NTSB training courses will be credited to the Board's appropriation, 2) require payment from federal agencies and state, local and foreign governments for the reasonable cost of goods and services provided by NTSB, with these payments also applied to the Board's appropriation, and 3) eliminate certain Federal Register notice requirements.

Amendments to the Airport and Airway Improvement Act, included in this bill, would allow an airport to include certain airport liability insurance premium costs as part of a project covered by an Airport Improvement Program grant. These premium costs would be an allowable project only for fiscal year 1987, and only funds otherwise made available for these grants could be obligated for this purpose.

5. Estimated cost to the Federal Government:

| | 1987 | 1988 | 1989 | 1990 | 1991 |
|---|---|---|---|---|---|
| Estimated authorization level: | | | | | |
| NTSB authorization | 24.0 | 25.4 | 27.0 | | |
| Replenishment of emergency fund | | | | | |
| Total estimated authorizations | 24.4 | 25.4 | 27.0 | | |
| Estimated outlays | 21.6 | 25.4 | 26.9 | 2.7 | |

Note: The costs of this bill would fall within budget function 400.

*Basis of Estimate:*

In fiscal year 1983, an appropriation of $1 million was provided for the emergency fund authorized by this bill. This unobligated fund balance remained until fiscal year 1985 when $351,000 was obligated from the fund. This estimate assumes that $351,000 would be appropriated for fiscal year 1987 to bring the fund balance back to the full authorized amount of $1 million. No outlays are reflected from this appropriation because CBO is unable to predict when

conditions will arise requiring use of these funds. The NTSB would be required to consult with Congress prior to incurring any obligations from the fund.

Based on information provided by NTSB, CBO does not expect payments for goods and services provided to federal agencies or state, local or foreign governments, or for tuition for non-employees attending NTSB training to have a significant budgetary impact.

It is assumed that the full amounts authorized would be appropriated. The outlay estimate is based on the historical spending rates.

6. Financing mechanism: This legislation authorizes funding to be provided in subsequent appropriation bills. This cost estimate shows the amount of budget authority that would be authorized to be appropriated. The estimated outlays, with the exception noted above, are those that would be generated if the Congress chooses to fund fully the authorized amounts.

7. Estimated cost to State and local governments: As stated above, this bill would require state and local governments to reimburse NTSB for goods and services supplied to them. This is not expected to involve a significant burden for these governments.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Marjorie Miller.

11. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

## Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

The bill would not subject any individual or businesses to additional regulation, and therefore would not have any economic impact on such individuals or businesses. By eliminating certain Federal Register notice requirements, the bill would result in a reduction of paperwork requirements. The bill will not have any adverse impact on the personal privacy of individuals.

## Section-by-Section Analysis

### SECTION 1—SHORT TITLE

This section states the short title of the bill, which is the "Independent Safety Board Act Amendments of 1986."

### SECTION 2—FEDERAL REGISTER NOTICE REQUIREMENTS

This section would eliminate the requirement that a notice of the issuance and availability of NTSB accident investigation reports and recommendations, as well as any comments received in response to them, be published in the Federal Register.

In view of escalating costs and the absence of evidence of significant use by or benefit to the public, the NTSB has twice reduced the scope of its notices since 1974. No public comment or objection has been received and the NTSB believes the purposes intended by the requirement are being met through other techniques such as

the issuance of press releases on all NTSB reports and safety recommendations.

An annual cost savings of $25,000 is anticipated if the requirement is eliminated.

SECTION 3—ACCIDENT INVESTIGATION COST RECOVERY

Section 3 enables the NTSB to require payment or other appropriate consideration from Federal agencies and State, local, and foreign governments for the reasonable cost of goods and services supplied in accident investigations. An example of this is the widespread use of the NTSB's laboratory to examine accident data from cockpit voice recorders and flight data recorders. The legislation provides for the funds received by the NTSB to be applied to current appropriations.

It is believed that the NTSB can no longer afford to investigate voluntarily accidents involving aircraft that are owned or used exclusively by State or local governments (public aircraft) without charge. Unlike accidents involving civil aircraft, which the NTSB must investigate, the agency is not currently required to investigate accidents involving public aircraft. However, upon request, the NTSB will assist the relevant governmental authoritity in the investigation of such accidents.

The NTSB has argued that given current budgetary limitations, it may be required to abandon the investigation of accidents involving public aircraft. The Committee believes that the authority to provide such services at a reasonable cost and the ability to apply those funds to current year appropriations is necessary for the NTSB to be able to continue its activities in this area.

SECTION 4—ACCIDENT INVESTIGATION TRAINING TUITION FEES

This section provides the NTSB with the authority to collect fees from non-NTSB students who are taking accident investiagtion courses offered by the NTSB, and to apply those funds to current appropriations, in order to defray the costs involved in training those additional students.

The primary purpose of the accident investigation school run by the NTSB is to train NTSB employees in accident investigation techniques and methodolgy. However, the NTSB has found it difficult to convene enough NTSB employees to justify offering certain training courses on a regular basis. As such, it has allowed foreign, State, and local government and transportation industry officials to attend its courses in order to be able to hold the courses more frequently. In addition, the NTSB strives to accommodate outside officials who request training in accident investigation.

SECTION 5—FOREIGN INVESTIGATIONS

Section 5 allows the NTSB to defer release of records and information obtained during or generated in connection with the NTSB's participation in aircraft investigations conducted by foreign countries until the country issues its final report, or until 2 years following the date of the accident, whichever first occurs.

This section is intended to address the problem that has arisen when the NTSB, pursuant to the Freedom of Information Act, has been required to disclose information it possesses before the affected foreign government has completed its investigative work. To date, foreign governments have avoided premature disclosure of sensitive information by prohibiting NTSB investigators from retaining certain accident investigation records. The Committee believes that this provision will result in the availability of more information for analysis by the NTSB and the use of the American public.

SECTION 6—PUBLIC ACCESS TO SAFETY RECOMMENDATIONS

This section ensures that copies of individual safety recommendations issued by the NTSB, and the recommendation responses received, are available to the public at reasonable cost on request from the NTSB's Public Inquires Section.

SECTION 7—GENERAL AND EMERGENCY AUTHORITY

This section authorizes funding for the NTSB at levels of $24 million, $25,400,000 and $27 million for fiscal years 1987, 1988, and 1989, respectively. These amounts do not provide for any new program activities, but are intended to cover the effects of inflation and other unavoidable cost increases. A continuation of the 347 full-time equivalent staffing level was assumed by the Committee in approving funding levels.

This section also provides the NTSB with authority for a $1 million emergency fund, to remain available until expended, to allow the Board to meet its accident investigation responsibilities in years when there are an unusually large number of accidents and general authorization levels are not adequate. In 1982, Congress established a $1 million emergency fund to supplement the NTSB's regular appropriations to enable it to meet its accident investigation responsibilities. The NTSB did not find it necessary to draw upon these funds until 1985, when funds were used to assist in the recovery of an Air India Boeing 747 aircraft that crashed off the coast of Ireland. This provision will provide the necessary authority to continue this emergency fund, which can be used for accident investigation only, and to allow for its replenishment, when needed.

It is the Committee's intent that emergency funds only be expended by the NTSB pending notification of the appropriate committees of Congress. Such notification should specify the activities for which additional funding is required and why such activities cannot be performed under the amounts made available through the NTSB's annual authorization and appropriations.

SECTION 8—AIRPORT LIABILITY INSURANCE

This section amends the Airport and Airway Improvement Act of 1982 to allow airports that receive funds under the Federal Aviation Administration's (FAA) AIP to use a portion of those funds in fiscal year 1987 for liability insurance premium payments. These funds would be limited to airport development or air navigation fa-

cilities operated by the sponsor (including contract towers) at public airports experiencing financial hardship.

The Committee recognizes that public airports have been hard hit by rapidly escalating liability insurance premium costs, which in some cases have increased by 600 to 700 percent in a single year. Moreover, small and medium-sized airports are particularly limited in their ability to cover these costs in the short-term by passing them on to commercial and general aviation users. Consequently, many of these smaller airports face the possibility of either closing or continuing without adequate insurance.

This section is intended to address this short-term crisis by directing funds toward these small and medium-sized airports for one year. The total Federal share is limited at any airport to 50 percent of the cost of its insurance premium, with no single airport being eligible for more than $50,000. In addition, the overall scope of this program is restricted by limiting the total amount of funds made available from the AIP to no more than 1 percent of such funds. If fully funded, the program would have $10,170,000 in fiscal year 1987.

It is the Committee's intent that the Secretary of Transportation ensure that airports seeking these funds do not have reasonable alternative means of obtaining necessary money to pay the increased liability insurance costs. In establishing the criteria to determine "hardship," however, the Secretary shall not adopt standards that have the practical effect of making it impossible for airports in need of assistance to receive these funds. In view of the time-sensitive nature of the problem, the Committee therefore expects the Secretary to place a maximum reliance upon an airport's certification of the absence of alternative financing.

The Committee continues to believe that the Aviation Trust Fund, which funds airport and airways development projects, should be dedicated principally toward capital projects. However, in light of the liability insurance crisis and the fact that monies previously have been appropriated from the Trust Fund for the FAA's operating expenses and to finance local airport planning, it is reasonable to use the Trust Fund, with its burgeoning surplus, to help keep these airports in operation.

## Rollcall Votes in Committee

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following record votes during its consideration of S. 2807:

On amendment by Senator Exon regarding airport liability insurance:

| YEAS—9 | NAYS—7 |
|---|---|
| Mr. Pressler | Mr. Danforth |
| Mr. Kasten | Mr. Packwood [1] |
| Mr. Hollings | Mr. Goldwater [1] |
| Mr. Inouye | Mrs. Kassebaum |
| Mr. Ford | Mr. Gorton |
| Mr. Riegle | Mr. Stevens |
| Mr. Exon | Mr. Trible |
| Mr. Gore | |
| Mr. Rockefeller | |

[1] By proxy.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

## THE INDEPENDENT SAFETY BOARD ACT OF 1974

### Section 304 of that Act

#### GENERAL PROVISIONS

SEC. 304. (a) DUTIES OF BOARD.—The Board shall—

(1) * * *

(2) report in writing on the facts, conditions, and circumstances of each accident investigated pursuant to paragraph (1) of this subsection and cause such reports to be made available to the public at reasonable cost [and to cause notice of the issuance and availability of such reports to be published in the Federal Register];

(3)–(9) * * *

(b) POWERS OF BOARD.—

(1)–(5) * * *

(6) The Board is authorized to (A) use, on a reimbursable basis or otherwise, when appropriate, available services, equipment, personnel, and facilities of the Department of Transportation and of other civilian or military agencies and instrumentalities of the Federal Government; (B) confer with employees and use available services, records, and facilities of State, municipal, or local governments and agencies; (C) employ experts and consultants in accordance with section 3109 of title 5, United States Code; (D) appoint one or more adivsory committees composed of qualified private citizens or officials of Federal, State, or local governments as it deems necessary or appropriate, in accordance with the Federal Advisory Committee Act (5 U.S.C. App. I); (E) accept voluntary and uncompensated services notwithstanding any other provision of law; (F) accept gifts or donations of money or property (real, personal, mixed, tangible, or intangible); [and] (G) enter into contracts with public or private nonprofit entities for the conduct of studies related to any of its functions; *and (H) require payment or other appropriate consideration from Federal agencies and State, local, and foreign governments for the reasonable cost of goods and services supplied and to apply the payment or consideration received to the Board's appropriations.*

(7)–(9) * * *

*(10)(A) The Board may conduct a school or schools for the purpose of training employees of the Board in those subjects necessary for the proper performance of all authorized functions of the Board. The Board may also authorize attendance of other*

*governmental personnel, personnel of foreign governments or personnel from the transportation industry at courses given in such school or schools, except that, if the attendance of such persons increases the cost of operation of such school or schools, the Board may require the payment or transfer of sufficient funds or other appropriate consideration to offset such increased costs. In providing any training to employees of the Board or other agencies of the Federal Government, the Board shall be subject to the provisions of chapter 41 of title 5, United States Code.*

*(B) funds received by the Board under this paragraph shall be credited—*

*(i) to appropriations current at the time the expenditures are to be or have been paid;*

*(ii) to appropriations current at the time such funds are received; or*

*(iii) in part, as provided under clause (i) and in part, as provided under clause (ii) of this subparagraph.*

[(10)] *(11)* Establish such rules and regulations as may be necessary to the exercise of its functions.

(c)–(d) * * *

* * * * * * *

Section 306 of that Act

PUBLIC ACCESS TO INFORMATION

SEC. 306. (a) GENERAL.—Copies of any communication, document, investigation, or other report, or information received or sent by the Board, or any member or employee of the Board, shall be made available to the public upon identifiable request, and at reasonable cost, unless such information may not be publicly released pursuant to [subsection (b) or (c)] *subsection (d), (c), or (d)* of this section. Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(b)–(c) * * *

*(d) FOREIGN INVESTIGATIONS.—Notwithstanding any other provision of law, the Board shall not disclose records or information relating to its participation in any foreign aircraft accident investigation, except that—*

*(1) the Board shall release records and information pertaining to such an investigation when the country conducting the investigation issues its final report or 2 years following the date of the accident, whichever first occurs; and*

*(2) the Board may disclose records and information when the country conducting the investigation authorizes the Board to make such disclosure.*

*Nothing in this subsection shall restrict the Board at any time from referring to foreign accident investigation information in making safety recommendations.*

Section 307 of that Act

RESPONSE TO BOARD RECOMMENDATIONS

SEC. 307. (a) Whenever the Board submits a recommendation regarding transportation safety to the Secretary, he shall respond to each such recommendation formally and in writing not later than 90 days after receipt thereof. The response to the Board by the Secretary shall indicate his intention to—

(1) initiate and conduct procedures for adopting such recommendation in full, pursuant to a proposed timetable, a copy of which shall be included;

(2) initiate and conduct procedures for adopting such recommendation in part, pursuant to a proposed timetable, a copy of which shall be included. Such response shall set forth in detail the reasons for the refusal to proceed as to the remainder of such recommendation; or

(3) refuse to initiate or conduct procedures for adopting such recommendation. Such response shall set forth in detail the reasons for such refusal.

* * * * * * *

[The Board shall cause notice of the issuance of each such recommendation and of each receipt of a response thereto to be published in the Federal Register, and shall make copies thereof available to the public at reasonable cost.] *The Board shall make copies of each such recommendation and response to each such recommendation available to the public at reasonable cost.*

(b) * * *

Section 309 of that Act

AUTHORIZATION OF APPROPRIATIONS

SEC. 309. *(a) GENERAL AUTHORIZATION.*—There are authorized to be appropriated for the purposes of this Act not to exceed $12,000,000 for the fiscal year ending June 30, 1975; and $12,000,000 for the fiscal year ending June 30, 1976, such sums to remain available until expended. There are authorized to be appropriated for the purpose of this Act not to exceed $3,800,000 for the transition quarter ending September 30, 1976, $15,200,000 for the fiscal year ending September 30, 1977, and $16,400,000 for the fiscal year ending September 30, 1978, such sums to remain available until expended. There are authorized to be appropriated for the purposes of this Act not to exceed $16,420,000 for the fiscal year ending September 30, 1979, and $17,650,000 for the fiscal year ending September 30, 1980, such sums to remain available until expended. There are authorized to be appropriated for the purposes of this Act not to exceed $18,540,000 for the fiscal year ending September 30, 1981, $19,925,000 for the fiscal year ending September 30, 1982, and $22,100,000 for the fiscal year ending September 30, 1983, such sums to remain available until expended. There are authorized to be appropriated for the purposes of this Act not to exceed $22,600,000 for the fiscal year ending September 30, 1984, $24,500,000 for the fiscal year ending September 30, 1985, and

$26,100,000 for the fiscal year ending September 30, 1986, such sums to remain available until expended. *There are authorized to be appropriated for the purposes of this Act not to exceed $24,000,000 for the fiscal year ending September 30, 1987, $25,400,000 for the fiscal year ending September 30, 1988, and $27,000,000 for the fiscal year ending September 30, 1989, such sums to remain available until expended.*

*(b) EMERGENCY FUND.—An emergency fund of $1,000,000 is authorized for expenditure by the Board to be available for necessary expenses, not otherwise provided for, of the Board for accident investigations. There is authorized to be appropriated such sums as may be necessary to establish such emergency fund and to replenish such fund annually. Such sum shall remain available until expended. Whenever the Board determines to expend any sums in the emergency fund, the Board shall notify the appropriate committees of the Congress of such determination, together with an identification of the activity for which such sums will be expended, a justification for using such sums for such activity, and reasons why such activity could not be performed under the amounts made available by any act providing annual authorization and appropriations of funds provided for other activities of the Board.*

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THE AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982

Section 503 of that Act

**SEC. 503. DEFINITIONS**

(a) IN GENERAL.—As used in this title—

(1)–(11) * * *

(12) "Project" means a project (or separate projects submitted together) for the accomplishment of airport development or airport planning, including the combined submission of all projects which are to be undertaken at an airport in a fiscal year, *and, as authorized by section 513(d) of this title, including airport liability insurance premiums incurred by a sponsor for those facilities under its control that are included within airport development or within air navigation facilities, as described in section 506 of this title.*

(13)–(24) * * *

(b) * * *

* * * * * * *

Section 513 of that Act

**SEC. 513. PROJECT COSTS.**

(a)–(c) * * *

*(d) AIRPORT LIABILITY INSURANCE COSTS.—(1) Subject to the limitations specified in this subsection an din conformity with implementing regulations to be issued by the Secretary within 45 days after the date of enactment of this subsection to assure that project costs allowable under this subsection are limited to hardship situations, the Secretary shall, upon application, make project grants to sponsors for that share of the sponsors' annual premium costs for*

*airport liability insurance which are attributable solely to airport development and air navigation facilities at airports under the control of the sponsors.*

*(2) Notwithstanding any other provision of this title, the following limitations shall apply to all grants made under this subsection:*

*(A) Airport liability insurance premium costs shall be an allowable project under this Act only for fiscal year 1987.*

*(B) Only funds made available to the Secretary for fiscal year 1987 under section 505 of this title may be obligated under this subsection, and not more than 1 percent of such funds may be obligated for purposes of this subsection.*

*(C) The United States share of project costs shall not exceed 50 percent.*

*(D) Not more than $50,000 shall be obligated for allowable project costs for any single airport.*

*(E) No funds may be obligated under this subsection to any sponsor that has not certified in its project grant application, as applicable, that the sponsor has all of the safety equipment which is required of such sponsor for certification of such airport and has all of the security equipment which is required by rule or regulation of the Secretary or the Administrator of the Federal Aviation Administration.*

○

Calendar No. 954

99TH CONGRESS
2d Session

SENATE

REPORT
99-465

# U.S. CRUISE SHIP REVITALIZATION

SEPTEMBER 22 (legislative day, SEPTEMBER 15), 1986.—Ordered to be printed

Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, submitted the following

## REPORT

[To accompany S. 1935]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1935) to direct the secretary of the department in which the Coast Guard is operating to cause certain vessels to be documented as vessels of the United States so as to be entitled to engage in the domestic coastwise trade, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill do pass.

### PURPOSE OF BILL

S. 1935, as reported, is designed to revitalize the domestic cruise vessel industry without adversely impacting on current efforts to build and refurbish deep-water cruise vessels in the United States. The legislation would permit the documentation and operation of certain foreign-built cruise vessels in the coastwise passenger trade if construction or refurbishment of two U.S.-built deep-water passenger vessels has not been substantially completed by September 1, 1988.

### BACKGROUND AND NEEDS

Much concern has been expressed about the inability of U.S.-flag vessel operators to participate in an expanding domestic market for the entertainment, convention, and vacation services provided by cruise vessels. Although U.S. companies have in the past operated large deep-water cruise vessels, foreign competition has nearly totally eclipsed the domestic industry in recent years.

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There are currently only two U.S.-flag deep-water cruise vessels, both operating in waters off Hawaii. There are also a number of smaller U.S.-flag cruise vessels which operate in the inland waterways and along the coastline, but these vessels do not offer the same type of services and amenities provided by luxury, deep-water cruise liners. The great majority of cruise vessels calling at U.S. ports are foreign-flag vessels. These vessels are prohibited from transporting passengers between U.S. ports and from permitting passengers to disembark on a permanent basis in a U.S. port other than the port of original embarkation. Customs Service regulations, however, permit them to disembark and then re-board the same passengers at up to four U.S. ports per voyage for a period of 2 days or less, thereby allowing the foreign-flag cruise vessels to include a variety of U.S. ports in a given itinerary and to exploit the growing market for luxury cruises.

Beginning in the 97th Congress, there have been several efforts to amend the cabotage laws to permit two foreign-built luxury cruise vessels, the *Cunard Princess* and the *Cunard Countess*, to be documented as vessels of the United States and to transport passengers in the coastwise trade. S. 3038 was introduced in the 97th Congress and referred to the Senate Commerce Committee, but it was not considered by the Committee. Legislation was again introduced in the 98th Congress as S. 1197 and H.R. 1883.

Four major concerns were raised by opponents of S. 1197 and H.R. 1883. First, there was testimony that U.S. citizens were planning either to construct new cruise vessels in the United States or refurbish vessels which were originally built in the United States for use in the cruise trade. Those interests expressed concerns that the foreign-built vessels would be able to offer services at lower prices than U.S.-built vessels due, in part, to lower vessel construction costs, and that the entry of such vessels would impede or entirely preclude efforts to secure financing for construction and refurbishment in the United States. Opponents also maintained that the entry of the two Cunard vessels into the U.S. market would draw customers away from the small domestic passenger vessel operators and from companies which had expressed an interest in building deep-water passenger vessels in U.S. shipyards. Third, the opponents of the legislation felt that it would be ill-advised to provide ad hoc exceptions to the Nation's cabotage laws, because to do so would amount to a repeal of those laws without addressing the fundamental question of whether they still serve the national interest. Finally, in view of the testimony of the Department of Defense on the bills, the opponents of the legislation contended that there was no national defense need to justify the ad hoc exceptions.

Proponents of the legislation maintained that the documentation of the two Cunard vessels would not adversely impact domestic cruise vessel operations. They distinguished large deep-water cruise vessels from small passenger vessels on the basis of services, amenities, and prices offered by each category of passenger vessel. The proponents also suggested that deep-water cruise vessels were not likely to be constructed or refurbished in the United States due to the high costs of domestic construction. Finally, supporters of S. 1197 contended that the operation of the two Cunard vessels as U.S.-flag vessels would contribute to the national defense by

making them available for requisition should the Navy require vessels for troop transport or evacuation purposes. They suggested that, in addition to available tonnage, documentation of the two vessels would result in greater employment of U.S. seamen who would be available to the Navy during times of emergency.

S. 1197 was rejected by the Senate Commerce Committee in executive session on November 16, 1983, by a vote of 8 to 9. Subsequent to that action, Senate conferees successfully insisted that the provisions of H.R. 1883 be deleted from the House-passed Department of Defense authorization bill in which it had been included. On December 12, 1985, after no deep-water cruise vessels had been constructed or refurbished in the United States during 1984 or 1985, Senator Stevens introduced S. 1935 to permit up to five foreign-built cruise vessels to be documented for operation in the domestic cruise vessel trade. Rather than designating specific vessels for documentation, the legislation imposed vessel design and age specifications, required U.S. ownership, and required alteration and repair work to be done in U.S. shipyards.

## LEGISLATIVE HISTORY

S. 1935 was introduced by Senator Stevens on December 12, 1985. The Subcommittee on Merchant Marine held a hearing on the legislation on June 4, 1986. Witnesses at the hearing included representatives of the Maritime Administration (MarAd), the Navy, maritime unions, cruise vessel companies, a shipyard, and a travel publication.

The Committee considered S. 1935 in executive session and ordered reported an amendment in the nature of a substitute for S. 1935 and an amendment to the title without objection on August 7, 1986.

## SUMMARY OF MAJOR PROVISIONS

S. 1935, as reported, is a compromise measure designed to achieve the revitalization of the U.S.-flag cruise ship industry by providing a 2-year period for U.S.-built vessels to be considered or refurbished, and allowing eligible foreign-built vessels to be documented for and operate under certain conditions in the coastwise trade if two or more such U.S.-built vessels are not substantially completed by the end of the period. The major features of the bill are discussed below.

### *Delayed and contingent effectiveness*

Section 2 delays the effective date of the other provisions of the bill allowing documentation of foreign-built cruise vessels until September 1, 1988, and makes those other provisions of the bill contingent. If construction or refurbishment of two or more 600-passenger cruise vessels is substantially completed by that date, the remaining provisions do not become effective at all and no foreign-built cruise vessels could be documented under this legislation.

Information provided to the Committee indicated that efforts to secure financing for the construction or refurbishment of U.S.-built luxury passenger vessels were frustrated and impaired by the prospect that legislation would be enacted allowing foreign-built vessels

to enter the coastwise trade and compete in the same market with lower fares made feasible by their lower construction costs abroad. The Committee was further advised of plans and efforts to construct or refurbish at least four U.S.-built cruise vessels within the next 3 years. These include the construction of two 800-passenger vessels by the American Ship Building Company, the refurbishment of the 636-passenger S.S. *Monterey,* and the refurbishment of the 1,575-passenger S.S. *United States.* Section 2 of the bill is designed to provide the necessary protection and incentive to these domestic endeavors to obtain financing, free from the threat of foreign-built competition, and to achieve substantial completion of just two of the four vessels by September 1, 1988. If two or more such vessels have not been substantially completed by that date, the Committee intends that foreign-built vessels be documented and used by United States citizens to serve the growing cruise market that is currently being exploited by foreign-built vessels and foreign corporations.

Section 2 requires the Secretary of the department in which the Coast Guard is operating (the "Secretary") to determine and publish notice of the "substantial completion" of construction or refurbishment of U.S.-built cruise vessels with accommodations for at least 600 passengers. The Committee intends that the Secretary consider construction or refurbishment of a vessel to have reached the stage of "substantial completion" when: (1) the keel has been laid; (2) firm, irrevocable commitments and financing have been placed to complete the vessel; (3) at least 50 percent of the financing has been expended or contractually obligated; (4) sufficient work and associated arrangements have been concluded so as to make it likely that the vessel will be engaged in the actual transportation of passengers on a commercial basis in the 1989 season or shortly thereafter; and (5) advance bookings for such service are being offered and advertised pursuant to a Certificate of Financial Responsibility for Indemnification of Passengers for Non-performance of Transportation. The Committee intends that the Secretary, in determining whether a vessel has reached the stage of "substantial completion", consider and make appropriate allowance for unavoidable delays caused by force majeure, acts of God, and other events beyond the control of persons constructing or refurbishing a vessel.

*Size and number of foreign-built vessels*

S. 1935, as introduced, would have permitted no more than five 400-cabin foreign-built vessels to be selected by the Secretary for documentation. It required U.S. citizens interested in bringing such vessels into the domestic trade to file an application for such documentation within 6 months of the date of enactment of the bill.

S. 1935, as reported, changes the criteria for and procedures governing documentation of foreign-built vessels in the event that two U.S.-built vessels are not substantially completed. The size criterion is changed from 400 cabins to at least 600 passengers throughout the bill. In addition, an unlimited number of vessels may be selected for documentation from among the applications filed between September 1, 1988, and September 1, 1989, provided that the vessel design, age, and other requirements of the bill are satisfied.

*Protective provisions*

The bill, as reported, contains provisions designed to protect U.S.-built cruise vessels from competition with any foreign-built cruise vessels that may be allowed to enter the coastwise trade if construction or refurbishment of two or more U.S.-built vessels is not substantially completed by September 1, 1988.

Section 6 prohibited the foreign-built vessels eligible for documentation from competing with domestic U.S.-built cruise vessels which are in operation on September 1, 1988, and provide service substantially similar to that offered by the foreign-built vessels. Section 7 establishes a mechanism to terminate, or "bump," the service of the foreign-built vessels if a U.S.-built vessel enters the trade and provides substantially similar service after September 1, 1988.

## ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, August 18, 1986.*

Hon. JOHN C. DANFORTH,
*Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1935, the Passenger Ship Act of 1986, as ordered reported by the Senate Committee on Commerce, Science and Transportation, August 7, 1986. CBO estimates that enactment of S. 1935 would have no significant impact on the federal budget and would have no impact on the budget of state or local governments.

S. 1935 would direct the secretary of the department in which the Coast Guard is operating to cause certain vessels to be documented as U.S. vessels. The bill would require the Coast Guard to monitor the status of efforts to construct or refurbish passenger ships in the United States and publish notice of documentation of the vessel within 30 days of substantial completion. CBO does not expect the Coast Guard to incur significant additional costs in implementing S. 1935, because of the very small number of vessels likely to be involved.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER, *Director.*

## REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

If two U.S. cruise vessels enter the coastwise passenger trade prior to September 1, 1988, S. 1935 will result in no new regulatory impact or reporting requirements because the provisions of the legislation other than section 2 will not take effect. If this condition subsequent does not arise, S. 1935 will result in additional regulatory responsibilities for the U.S. Coast Guard. All foreign-built vessels which are selected for documentation under sections 3 through 10 would be required to comply with the safety and inspection requirements of title 46, United States Code. The Coast Guard is the Federal agency responsible for carrying out the provisions of title 46. Additional responsibilities would then also be imposed on the Secretary of Transportation to the extent that applications for documentation of foreign-built vessels are submitted for review and approval.

The Federal Maritime Commission (FMC) will experience no additional regulatory responsibilities or reporting requirements. Federal law (46 App. U.S.C. 817(e)) already requires existing domestic and foreign-built cruise vessels operating from U.S. ports to file a Certificate of Financial Responsibility for Indemnification of Passengers for Non-performance of Transportation. S. 1935 does not affect this requirement.

The legislation will have an effect on the number of individuals regulated only to the extent that foreign-built vessels are selected for documentation. S. 1935 will have no further effect on the types of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals and businesses.

## SECTION-BY-SECTION ANALYSIS

*Section 1*

The first section states the short title of the legislation, the "Passenger Ship Act of 1986".

*Section 2*

Section 2 delays the implementation of sections 3 through 10 of this bill until September 1, 1988. If, on that date, there has not been substantial completion of construction or refurbishment of two or more U.S.-built cruise vessels with accommodations for at least 600 passengers, sections 3 through 10 shall take effect and U.S. citizens will be permitted to submit applications to the Secretary to document foreign-built cruise vessels for operation in the coastwise trade.

This section imposes a responsibility on the Secretary to monitor the status of efforts to construct or refurbish such passenger vessels in the United States. The Secretary is directed to publish notice in the Federal Register within 30 days after the substantial completion of such construction or refurbishment.

*Section 3*

Section 3 waives the statutory prohibitions that would otherwise preclude the documentation of foreign-built cruise vessels for use in the coastwise passenger trade. The grant of authority to the Secre-

tary is contingent on the failure to achieve substantial completion of two U.S.-built vessels by September 1, 1988.

This section imposes certain conditions on the owners of foreign-built vessels which would be documented under this legislation. These conditions require the owner to operate under the same rules as other coastwise operators. Each vessel must be in compliance with all laws or regulations applicable to vessels engaged in coastwise trade. All non-emergency alterations and repairs subsequent to September 1, 1988, must be performed in U.S. shipyards, including repair work necessary to bring the vessels into compliance with the documentation requirements or to eliminate cargo space not essential to the operation of a passenger vessel. In addition, the owner of each vessel must be a U.S. citizen at the time of documentation.

This section specifically prohibits any documented foreign-built vessel from engaging in the transportation of cargo unrelated to the operation of the cruise service. The owner of each vessel is also required to agree to enter into a contract with the Federal Government to install military features which would enhance the usefulness of the vessel for the Strategic Sealift Program.

Vessel design criteria included in this section limit the types of vessels which can be brought into the coastwise trade. The criteria are intended to limit selection to those vessels which are modern, efficient, and economical, and easily adaptable for use in the Strategic Sealift Program. Such vessels must have accommodations for at least 600 passengers. This criterion prohibits the documentation of smaller passenger vessels which would be less suitable for use as sealift vessels and which would compete with U.S.-built small passenger vessels operating in the coastal waters of the United States.

The criterion requiring each vessel to have twin screws and weigh at least 10,000 gross registered tons was included at the suggestion of representatives of MarAd who stated that twin screws will give each vessel greater mobility, thereby increasing its value to the Strategic Sealift Program. The tonnage requirement reflects the definition of passenger vessel set forth in the Merchant Marine Act, 1936 (46 App. U.S.C. 1183).

*Section 4*

Section 4 sets forth the procedures to be followed should sections 3 through 10 go into effect as of September 1, 1988.

The applicant must file a separate application for each vessel to be documented under the bill. Each application must be filed prior to September 1, 1989. There is no provision for extension of the application deadline.

The Secretary is required to select all vessels which meet the requirements for documentation set forth in section 2 by March 1, 1990, and is directed to notify each applicant of the selection. A filing fee of $3,000 is imposed to defer the costs of processing the applications and to discourage the filing of frivolous applications.

*Section 5*

Section 5 requires each vessel selected for documentation to enter the coastwise passenger trade within 2 years of notification by the Secretary that such vessel has been selected. The Committee

intends that the selection and documentation of a foreign-built vessel under this bill be vitiated if the vessel fails to enter the coastwise trade within that period of time.

*Section 6*

Section 6 prohibits a foreign-built vessel documented under this legislation from providing service which is "substantially similar" to that provided by a "coastwise passenger vessel constructed in the United States" in operation on September 1, 1988. The term "coastwise passenger vessel constructed in the United States" is defined in section 8. That section also provides some guidelines to assist the Secretary in determining whether a service is "substantially similar".

This section applies to the current owners and operators of coastwise passenger vessels operating in the domestic trade as well as to their successors in interest. If, for example, a sale of the S.S. *Constitution* and the S.S. *Independence* (the two existing deep-water cruise vessels operating between the Hawaiian Islands) were to be consummated, the U.S. citizen or company that purchased the vessels would enjoy the protection afforded by section 6. On the other hand, if the existing cruise vessel service is terminated and no successors in interest purchase and operate the vessels on an uninterrupted basis except for routine repairs and maintenance, the foreign-built vessels documented under this bill may offer service substantially similar to that previously provided by the domestic vessel.

*Section 7*

Section 7 establishes a mechanism to terminate, or "bump" the service of a foreign-built vessel documented under this bill. This mechanism is triggered by the entry of a U.S.-built vessel into the coastwise cruise trade which offers service substantially similar to that offered by the foreign-built vessel. While section 6 provides such protection for domestic vessels in operation on September 1, 1988, this section provides similar protection for those vessels that would begin operations after September 1, 1988. The provisions of section 8 defining "coastwise passenger vessel" and clarifying the scope of "substantially similar service" apply to section 7 as well as section 6.

This opportunity to terminate service is limited in duration, and must be exercised within 2 years of the date the Secretary notifies an applicant of the selection of a foreign-built vessel for documentation. A separate 2-year period accrues to each foreign-built vessel that is selected. If the 2-year period expires, the right of the foreign-built vessel to operate in the domestic passenger trade vests and may not be challenged under this section.

The individual or company wishing to trigger the termination mechanism must offer or advertise service to the public within 2 years of the date the foreign-built vessel enters the coastwise trade. The offer must be pursuant to a filing of a Certificate of Financial Responsibility for Indemnification of Passengers for Non-performance of Transportation with FMC. All existing domestic and foreign-flag passenger vessels operating from U.S. ports must file such a Certificate. Upon notice of the offer of service, the Secretary is

required to determine whether the service of the U.S.-built vessel is substantially similar to that of the foreign-built vessel. If so, the Secretary must notify the owner or operator of the foreign-built vessel that the service must be terminated within 365 days.

This section further requires that the U.S.-built vessel which triggered the termination of service actually enter the trade within 365 days after notice has been provided to the owner or operator of the foreign-built vessel. Failure to do so will vitiate the termination of service by the affected foreign-built vessel.

*Section 8*

Section 8 defines "coastwise passenger vessel of the United States" and clarifies the meaning of "substantially similar" service used in sections 6 and 7. Both those sections are intended to safeguard U.S.-built vessels against economic harm resulting from the operation of any foreign-built vessel offering "substantially similar" service. Such economic harm would occur if the foreign-built vessel encroached upon or diminished the market share of the U.S.-built vessel in a particular market.

While the factors enumerated in section 8 are intended to guide the Secretary in determining whether service by a foreign-built vessel would cause economic harm to a domestic operation and thus be "substantially similar", the Committee intends that they be illustrative rather than exclusive. The Committee intends that the Secretary interpret "substantially similar" service to mean more than merely identical service. In addition to offering identical service, a foreign-built vessel documented under the bill could, for example, capture part of the Hawaiian cruise market if it: offered cruise service between the mainland and Honolulu; offered cruise service from the mainland to Hawaii, and a return by air; or offered cruise service to Honolulu with an air tour of other islands. Such service causing economic harm to a domestic operator would be prohibited as "substantially similar" within the meaning of section 8.

*Section 9*

Section 9 requires the Secretary to modify the certificate of documentation to reflect the imposition or removal of a restriction on operations of foreign-built vessels imposed under sections 3, 6, and 7.

*Section 10*

Section 10 grants authority to the Secretary to prescribe rules and regulations to carry out the provisions of this legislation. The Secretary may wish to utilize this authority in further defining the term "substantially similar" service for purposes of sections 6 and 7.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

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